IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 220 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAGHUVIRPRASAD RAMSWAROOP AGARWAL

Versus

GIRJABEN WIDOW OF JASHVANTLAL BHIKHABHAI VYAS

Appearance:

MR AJ PATEL for MR PM BHATT for Petitioner

MR GR SHAIKH for Respondent No. 1

MR BY MANKAD ASSTT.GOVERNMENT PLEADER for Respondent No. 2

DELETED for Respondent No. 4

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 07/03/2000

ORAL JUDGEMENT

This is a petition under Articles 226 and 227 of the Constitution of India. It arises out of proceedings

under Sec.84C of Bombay Tenancy & Agricultural Lands Act, 1948 under following circumstances.

2. The petitioner purchased land bearing Survey Nos.362, 363, 364, 366 and 487 of Village Vatva, Tal. Dascroi, Dist.Ahmedabad from its owner Shri Jashwantlal Vyas by a registered sale deed dt. 15th October, 1979 for Rs. 41,500/-. Mutation entry was made in the revenue records on 22th October, 1981 and it was certified on 1st February, 1982. However, in 1983, Mamlatdar, Tal. Dascroi started suo-motu inquiry under Sec.84C of the Bombay Tenancy & Agricultural Lands Act (the "Act" for short), and issued notice to show cause why the sale deed should not be declared invalid for breach of Sec.63 of the Act. After hearing the petitioner, the Mamlatdar came to the conclusion that the petitioner was an agriculturist and it was not proved that there was breach of Sec.63 of the Act. He, therefore, by his order dt. 2nd February, 1987 dropped the proceedings. The owner of the land Jashwantlal Vyas from whom the petitioner had purchased the land, had died on 27th June, 1982, and his widow Girjaben -respondent no.1 filed an appeal (Tenancy Appeal No.195/87) before the Deputy Collector against the order of the Mamlatdar dt. 2nd February, 1987 dropping the proceedings. The Deputy Collector observed that Jashwantlal Vyas died on 27th June, 1982 and no notice was served either on him or his widow Girjaben and hence the order which had been passed against the dead party could not be said to be legal. He, therefore, by his order dt. 4th June, 1988, allowed the appeal and remanded the matter to the Mamlatdar with the direction to take a fresh decision after serving notice on all interested parties and giving them an opportunity of hearing.

3. The petitioner, being aggrieved by the said order of remand passed by the Deputy Collector, filed revision application (No.860/88) before the Gujarat Revenue Tribunal. However, the Tribunal, by its judgment and order dt. 2nd August, 1991, dismissed the said revision and confirmed the order of remand made by the Deputy Collector.

4. The petitioner, therefore, filed the present petition challenging the order of the Gujarat Revenue Tribunal and the order of remand made by the Deputy Collector. Rule was issued on 13th January, 1992 and further proceedings before the Mamlatdar were stayed.

5. A number of contentions have been raised in the petition but Mr. A.J.Patel, learned counsel for the

petitioner mainly pressed one contention. He contended that the owner of the land Jashwantlal Vyas from whom the petitioner has purchased the land had never challenged the sale deed and his widow Girjaben -respondent no.1 could not be said to be an aggrieved party, and therefore, Deputy Collector committed an error of law in entertaining the appeal against the order of the Mamlatdar dropping the proceedings. In support of his contention, he cited a decision of this Court in SMT. RATNAPRABHABAI D/O HIROJIRAO NARANRAO MANE v. M/S TULSIDAS V. PATEL & ORS (23 (2) G.L.R. 213. In the said decision, S.B.Majmudar, J. (as he then was) held in Para 18 as follows :-

" The appellate order of the Assistant Collector shows that the petitioner who was the original vendor had no cause of complaint and could not have preferred any appeal before the Assistant Collector challenging the order of the Mamlatdar refusing to invoke his suo motu powers under Sec.84C for invalidating the transaction to which the petitioner was a party being the vendor. It is an admitted position on the record of this case that the petitioner had not initiated any proceedings under sec.84C. She had not challenged the transaction by which she herself had sold the lands in question years back in 1961 to respondent No.1 having taken Rs.1,00,000/from it. It was the Mamlatdar who initiated the suo motu proceedings first in 1974 and then in 1980 on the second occasion on the supposition that the said transaction was violative of sec.84C. If for any reason, the authority had sought to reinvoke suo motu powers and had therefore subsequently dropped the suo motu proceedings realizing the futility thereof, it passes one's comprehension how the party in whose favour such decision is rendered by the Mamlatdar, can approach the appellate authority alleging to be an aggrieved party. By the order of the Mamlatdar, even on the second occasion, the notice issued suo motu calling upon the petitioner to show cause why her transaction with respondent No.1 should not be declared invalid, came to be discharged. Result was that the petitioner's sale transaction with respondent No.1 was not declared invalid and it remained untouched. Thereafter, the petitioner could never be said to be a party aggrieved which would be entitled to carry the matter in appeal. It is pertinent to note that the State of Gujarat has

not challenged the order of the Mamlatdar by which the Mamlatdar had refused to exercise suo motu powers under section 84C. The State would have been the proper party which would have felt aggrieved if at all by the order of the Mamlatdar. Under the scheme of section 84C(1) and (2), if a transaction pertaining to any agricultural land is found to be invalid and if the parties to the proceedings are not willing to restore status quo ante, the concerned lands would vest in the State Government. Mr. S.R.Shah learned Advocate appearing for respondents Nos.1 and 3 made it clear that these respondents are not willing to get status quo ante restored so far as the lands in question are concerned. In such an eventuality, the only order which could have followed would have been the order of the Mamlatdar vesting the lands in the State. Such an order would never have benefited the petitioner in the least. The State which could have got these lands vested in it by any effective exercise of suo motu powers by the Mamlatdar under sec.84C did not think it proper to challenge his order refusing to take such action. In these circumstances, it is difficult to appreciate how the petitioner -original vendor of the lands felt aggrieved by the decision of the Mamlatdar who had refused to set aside petitioner's sale transaction of 1962 in favour of respondent No.1. The Assistant Collector, as a court of appeal, was justified when he took the view that the petitioner's appeal itself before the appellate authority under the Tenancy Act was not maintainable. This is the additional reason why no useful purpose can be served by remanding these proceedings for a fresh decision at the instance of the petitioner. It appears that the petitioner having pocketed Rs.1,00,000/- years back in 1962 is trying to catch at a straw and is practically indulging in the policy of dog in the manger by seeing that the hanging sword of the present litigation lingers on so that at sometime respondents Nos. 1 and 3 may come round and may give some added financial advantage are kept pending, such oblique intention of the petitioner may get fructified. The court obviously cannot be a party to such a design. When the petitioner is not a legally aggrieved party, it is impossible to give her any relief in the present proceedings under Article 227 of the Constitution by restoring these proceedings to the file of the

Tribunal so that the transaction entered into by the petitioner in favour of respondent No.1 years back in 1962 may once again be brought in the melting pot."

The ratio of the said decision is prima facie applicable to the facts of the present case. Shri A.J.Patel also cited unreported decisions in Special Civil Application Nos.5070 of 1999, 949 of 1995, 9423 of 1996 in which the decision rendered in Smt. Ratanprabhabai D/O Hirojirao Naranrao Mane vs. M/s Tulsidas V. Patel & Ors.[23 (2) G.L.R.213] has been followed. The petitioner has produced a copy of the sale deed at Annexure 'A'. Recitals in the sale deed show that the land originally belonged to one Jahangirji Edalji who had sold the same to one Karasanbhai Laljibhai Desai by a registered sale deed dt. 14th July, 1964. The said Karasanbhai Laljibhai Desai had purchased the said land for and on behalf of four partners including Jashwantlal Bhikhalal. The recitals also show that the suit was also filed against Jahangirji in 1963 which was dismissed and appeal was dismissed by the High Court in 1971. Thereafter, the said Karasanbhai Laljibhai Desai executed a sale deed in favour of Jashwantlal and two other partners by a registered document dt. 29th July, 1971 and each partner had obtained possession of the land coming to his share and the necessary entry had been made in the revenue record. Thereafter Jashwantlal sold the land to the petitioner by a registered sale deed dt. 15th October, 1979. Thus it is clear that Jashwantlal has purchased the land from the original owner Jahangirji as a business transaction and, in turn, he sold the land to the petitioner. This is not a case of a poor illiterate farmer having been duped into selling and parting with the land for a paltry amount. Jashwantlal, during his life time, never challenged the sale deed and did not apply to the Mamlatdar under Sec.84C to set aside the sale deed on the ground that the petitioner was not an agriculturist and that the sale deed was in breach of Sec.63 of the Act.

6. Hence in my opinion, the ratio of this court in Smt. Ratanprabhabai D/O Hirojirao Naranrao Mane vs. M/s Tulsidas V. Patel & Ors.[23 (2) G.L.R.213] is squarely applicable to the facts of the present case and the Deputy Collector was not justified in law in entertaining the appeal at the instance of the widow of Jashwantlal.

7. Shri G.R.Shaikh, the learned counsel for the respondent no.1 cited the decision of this court in MARK LABORATORIES & ORS vs. STATE OF GUJARAT & ORS, 38(1)

G.L.R.360 in which it is observed that the Competent Authority is obliged to issue notice in prescribed form to the transferor, transferee and also persons acquiring the land in dispute and that, it is a cardinal principle of Jurisprudence that no person should be visited with civil consequences without affording an opportunity of hearing. It appears that in the said decision the Revenue Tribunal had decided the revision application without hearing transferees of the land. In the present case, it is true that the notice was not served on the heir of Jashwantlal Vyas who had died, but as pointed earlier Jashwantlal during his life time never challenged the sale deed. When the Mamlatdar passed the order dropping the proceedings, it cannot be said that the heir of Jashwantlal i.e. widow of Jashwantlal had been visited with any adverse civil consequences. I need not to go so far as to say that under no circumstances, the transferor of the land can be allowed to contend in suo motu proceedings under Sec.84C of the Act that the sale deed is invalid but as already pointed out this is not a case of a poor illiterate farmer who had been cheated and Jashwantlal who sold the land could not have been a victim of any fraud practised by the petitioner. In the circumstances, the decision cited by Mr. G.R.Shaikh, the learned Counsel for the respondent no.1 does not help the respondent.

9. In view of my above conclusion, the Deputy Collector was not justified in entertaining the appeal at the instance of the widow of Jashwantlal. This petition deserves to be allowed and the same is, therefore, allowed. The impugned orders passed by the Gujarat Revenue Tribunal and the Deputy Collector (Annexures C and D) are quashed and set aside. Rule made absolute accordingly. No order as to costs.

Date: 7/3/2000. ----
ccshah